Quarterly Report

OF THE

ATTORNEY GENERAL

OF

ALABAMA

FOR THE PERIOD

FROM OCTOBER 1, 1967

THROUGH DECEMBER 31, 1967

VOLUME 129

MacDONALD GALLION, Attorney General

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QUARTERLY REPORT

of the

ATTORNEY GENERAL

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For the Period

From October 1, 1967

Through December 31, 1967

TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from October 1, 1967 through December 31, 1967, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

MacDONALD GALLION
Attorney General

MacDONALD GALLION
Attorney General

R. Hunter Phillips
Executive Assistant

John G. Bookout
Chief Assistant Attorney General

Assistant Attorneys General

Robert P. Bradley
Frank R. Broadway
David W. Clark
Paul T. Gish
Leslie Hall
Lloyd G. Hart
John Abner Lockett, Jr.
Randolph G. Lurie
Gordon Madison
William N. McQueen
Robert F. Miller
Marlin M. Mooneyham
James L. Screws
Lucian L. Smith, Jr.
Bernard F. Sykes
Walter S. Turner
John C. Tyson, III
Carl E. Watson

Assistant Attorneys General Assigned to other Departments

Highway:

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Edward H. Brogden
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George D. Mentz
Jack Norton

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Willard W. Livingston
Herbert I. Burson, Jr.
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B. Frank Loeb
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Pensions and Security:

Mrs. Mary Lee Stapp
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John D. Bonham

Examiners of Accounts:

James W. Webb

Finance:

James T. Hardin

Agriculture and Industries:

George O. Miller

OPINIONS

October 2, 1967

Honorable Hugh H. Williamson
Superintendent
County Board of Education
St. Clair County
Ashville, Alabama

Bids — Contracts — County Boards of Education — Schools.

The statute which requires a county board of education to purchase personal property on a competitive bid basis does not prevent the purchase of gasoline from an oil company, a corporation, whose local distributor is a member of such board.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated September 21, 1967, is as follows:

> "The St. Clair County Board of Education solicited bids on gasoline for the period October 1, 1967 to September 30, 1968 and opened said bids today, September 21, 1967. We received bids from Standard Oil Company of Kentucky and The American Oil Company. Standard Oil Company's bid was 13.3 cents per gallon and American Oil Company's bid was 13.2 cents per gallon. The American Oil Company bid came directly from the office in Atlanta, Georgia. The company has 2 distributorships in St. Clair County. The distributor for the southern half of the county is Mr. O. H. Lawley of Pell City, Alabama and the distributor for the northern half of the county is Mr. Ralph Windham, of Springville, Alabama, a member of the St. Clair County Board of Education.
>
> "My question is this: Can the St. Clair County Board of Education legally award the bid to American Oil Company in view of the fact that Mr. Windham is presently a member of the board and would be supplying the board with gasoline for the northern half of the county?"

Act No. 217, Acts of Alabama 1967, approved May 10, 1967, requires that the purchase to which your request refers be made on a competitive bid basis.

Section 3 of Act No. 217, supra, prohibits a member of a county board of education from having any financial or beneficial interest in any contract controlled by said Act.

This office has held that Section 3, supra, does not prevent an awarding agency from contracting with an incorporated firm which has as its officer or stockholder a member of such agency. See opin-

ion to Honorable John F. Watkins, Executive Director, Alabama League of Municipalities, under date of July 26, 1967.

Under the facts presented, the low bid was submitted by a large corporation, the American Oil Company, not by its distributor, who is a member of the St. Clair Board of Education. For this reason, Section 3, supra, does not prevent said Board from awarding the contract to the American Oil Company.

Therefore, your question is answered in the affirmative.

Very truly yours,
MacDONALD GALLION
Attorney General

October 3, 1967

Honorable Ralph P. Eagerton, Chief Examiner
Department of Examiners of Public Accounts
State Capitol
Montgomery, Alabama

Hospitals — Compensation — Opinions Overruled, Modified or Distinguished.

Under the broad powers of a county hospital association, it may hire a hospital administrative director and may pay him a salary within the maximum legal limitations, a part of which may be the furnishing of the use of certain housing facilities, and it should be so provided in his contract of employment.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion bearing date of September 12, 1967, is as follows:

> "I request your opinion as to whether public hospitals may furnish housing to its administrators without charge when such housing is located at or near the hospital on property owned by the hospital and when such housing is deemed necessary by the hospital board as a condition of employment. In this regard, please note Quarterly Report of Attorney General, Volume 116, page 14."

I am of the opinion that your inquiry should be answered in the affirmative, provided that such is provided for under his contract of employment.

In the opinion above referred to in Quarterly Report of Attorney General, Volume 116, page 14, dealing with the county hospital of Randolph County, Alabama, the syllabus thereto reads as follows:

"Hospitals — Randolph County.

"1. Under the broad powers given to a county hospital association by Act No. 211, General Acts of Alabama 1945, page 330, as amended, it may hire a director to run one of its units and pay him a salary; but it may not furnish him the use of a dwelling house owned by the association without rental charge; though his salary may be increased to take care of the rental cost."

In the last two paragraphs of the body of said opinion (which controls over the syllabus), it was stated:

> "I am of the opinion that the Wadley Executive Committee, acting within its sound discretion, has the power to contract with a qualified person, even though he be a medical doctor, to be the administrator of the Wadley Clinic; and that it may pay him a salary, and in reaching a fair and just remuneration, may take into consideration the rental cost of the dwelling in question.
>
> "However, the answer to your second question is in the negative, as no authority exists for furnishing such free living quarters for the administrator."

There appears to be a conflict in the above quoted syllabus and the above quoted portion of the opinion proper. Also the above wording of the opinion proper is not crystal clear. Therefore, I will take this occasion to attempt a clarification thereof.

It is my opinion that a hospital executive committee, acting in sound discretion has the power to contract with the qualified person to be a hospital administrator, and that it may pay him a salary within the maximum legal limitations, a part of which may be the furnishing of the use of housing facilities, such as that referred to in your letter of inquiry. This should be so provided for in his contract of employment.

The opinion reported in Quarterly Report of Attorney General, Volume 116, page 14, supra, is hereby clarified and modified to conform to the above.

Yours very truly,
MacDONALD GALLION
Attorney General

October 19, 1967

Honorable Thomas M. Galloway
Attorney at Law
958 Dauphin Street
Mobile, Alabama 36604

Bids — Contracts — Funds — Housing Authority — Municipalities.

Under the statute which requires local governments and agencies to award contracts on a competitive bid basis, only sealed bids may be considered by the awarding authority.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated September 21, 1967, is as follows:

> "By official opinion dated August 16, 1967, you were good enough to advise the Mobile Housing Board relative to questions as presented to you in my letter of July 18, 1967, which questions and your opinion relative thereto involved the compliance by the Mobile Housing Board with the provisions of Act No. 217 Acts of Alabama 1967, approved May 10, 1967.
>
> "The opinion was very clear and concise for which we thank you but there is one further matter which the Mobile Housing Board has requested that I seek your opinion. This question is:
>
> "May the Mobile Housing Board consider the itemized prices in the Consolidated Supply Contract as a bid at the time it considers other bids received as the result of advertisement or solicitation for same?
>
> "For sake of time and space I have not herein reiterated the facts relative to the Consolidated Supply Contract or other matters pertaining to the Mobile Housing Board but refer you to my letter of July 18, 1967, for these matters."

In the interest of clarity, I quote a portion of your letter of July 18, 1967, as follows:

> "In the operation of Public Housing particularly, and sometimes Urban Renewal, purchases are made from what is known as a 'Consolidated Supply Contract'. This is a catalog of supplies which are available from the enumerated supplier and this catalog is compiled by the Southeastern Regional Office of the Housing Assistance Agency of the Federal Government by taking bids from the various suppliers who agree to supply all Housing Boards in this area for the price as stipulated. These cover a number of items and the bid price for the whole area is generally less than any one Housing Board could receive by bid. When the Mobile Housing Board wishes to buy an item as listed that it merely writes the supplier who furnishes the item for the amount as set out in the Consolidated Supply Contract."

As was held in the opinion rendered to you under date of August 16, 1967, the provisions of the Competitive Bid Law, Act No. 217, Acts

of Alabama 1967, approved May 10, 1967, apply to purchases of personal property by the Mobile Housing Board.

Section 6 of Act No. 217, supra, reads, in part, as follows:

> "All proposed purchases in excess of five hundred dollars ($500.00) shall be advertised by posting notice thereof on a bulletin board maintained outside the purchasing office and in any other manner and for such lengths of time as may be determined, provided, however, that sealed bids shall also be solicited by sending notice by mail to all persons, firms, or corporations who have filed a request in writing that they be listed for solicitation on bids for such particular items as are set forth in such request. . . . All bids shall be sealed when received, shall be opened in public at the hour stated in the notice, and all original bids together with all documents pertaining to the award of the contract shall be retained and made a part of a permanent file or records, and shall be open to public inspection. . . . "

It could be argued that the requirement that submitted bids be sealed is only for the protection of the bidder and should not apply under the facts presented. However, since the courts have not heretofore ruled upon the problem presented, I am of the opinion that the above-quoted portion of said Section 6 should be considered mandatory.

Therefore, your question is answered in the negative.

Very truly yours,
MacDONALD GALLION
Attorney General

October 23, 1967

Honorable Porter Lee Hanes
Tax Assessor, Morgan County
Decatur, Alabama

Taxation — Ad Valorem Taxes — Exemptions — Homesteads.

1. Exemption of $12,000 granted in Title 51, Section 2(f), as amended, Code of Alabama 1940, should be applied to the fair and reasonable market value of property owned by a blind person.

2. Homestead exemption of $2,000 granted by Title 51, Section 15, Code of Alabama 1940, should be applied to the assessed value of property owned by the claimant of said exemption.

3. The exemptions granted in Title 51, Section 2(f), as amended, and Title 51, Section 15, Code of Alabama 1940, are cumulative and both exemptions may be claimed by a blind person if otherwise qualified for said exemptions.

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an official opinion, dated October 2, 1967, is as follows:

> "We need an official opinion in regards to Paragraph 'F' Section 2, Title 51, Code of Alabama, reference to Property and Personal exempt from Ad Valorem taxation, which reads as follows:
>
> "'(f) The property of deaf mutes, insane or blind persons to the extent of three thousand dollars.'
>
> "The question is does this mean the market value of the property or the assessed valuation. We have been of the opinion that this applied to the market value and have in the past allowed 60% of the $3,000 or $1,800 exemption. If we have been correct in this matter, and since we do not have a 60% law anymore, we question if we can legally allow more than 30% of the $3,000 value or $900.00 exemption.
>
> "Also if a taxpayer has an assessment in excess of $2,000 and cannot be allowed more than $900.00 Blind exemption, then what is the amount of **Homestead Exemption** that can be allowed this same person. Can they be granted the full $2,000 Homestead Exemption or must they be limited to a total of $2,000 for both exemptions."

First, I call your attention to the fact that property of blind persons is exempt from ad valorem tax to the extent of $12,000. Act No. 519, General Acts 1963, page 1107, effective October 1, 1963, amended Title 51, Section 2(f), Code of Alabama 1940, to read as follows:

> "Section 2. The following property and persons shall be exempt from ad valorem taxation and none other: . . .(f) The property of deaf mutes and insane persons to the extent of three thousand dollars, and the property of blind persons to the extent of twelve thousand dollars. . . ."

(The requirements to meet the definition of the term "blind person" is discussed in Quarterly Report of the Attorney General, Volume 100, page 23).

Under Section 17, Title 51, Code of Alabama 1940, as amended by Act No. 502, General Acts 1967, effective October 1, 1967, all taxable property within this State shall be assessed for the purpose of taxation not to exceed thirty percent of its fair and reasonable market value. The exemption granted in Section 2(f), supra, exempts property of blind persons to the extent of $12,000. It is my opinion that the exemption applies to the fair and reasonable market value and not to the assessed value; that is, of the fair and reasonable market value, $12,000 is exempt. I know of no authority to apply any percentage to the amount

of the exemption. For example, if a blind person owns a home with a fair and reasonable market value of $25,000, $12,000 of that value would be exempt from taxation, leaving $13,000 to be assessed at a percent not to exceed thirty percent. However, the exemption is not limited to any one county. A blind person meeting the requirements is given the exemption to the extent of $12,000 and all or part of the exemption may be claimed in any one or more counties wherein his property is located so long as the total exemption does not exceed $12,000.

Title 51, Section 15, Code of Alabama 1940, provides as follows:

> "§Homesteads.—Homesteads, as defined by the constitution and laws of the State of Alabama, are hereby exempted from all state ad valorem taxes. In no case shall the exemption herein made apply to more than one person, head of the family, nor shall said exemption exceed two thousand dollars in assessed value, nor one hundred sixty acres in area."

The homestead exemption is different from the exemption of property of blind persons. Section 15, supra, provides that the homestead exemption shall not exceed $2,000 in **assessed value.** Therefore, the homestead exemption applies to the assessed value of property for ad valorem taxation and not to the fair and reasonable market value.

The exemption provided for in Section 2(f), supra, and the homestead exemption provided for in Section 15, supra, are cumulative; that is, a blind person is entitled to claim both if otherwise qualified for said exemptions. Quarterly Report of the Attorney General, Volume 8, page 18.

Using the above example and assuming the blind person claims both the exemption under Section 2(f), supra, and the homestead exemption under Section 15, supra, it is my opinion that the assessment of his homestead for the State taxes at thirty percent of fair and reasonable market value should be as follows:

$25,000 fair and reasonable market value
—$12,000 exemption under Section 2(f), as amended

$13,000 value to be assessed
30%

$ 3,900 assessed value
—$ 2,000 homestead exemption

$ 1,900 assessed value for State taxation

The assessment sheet in the tax assessor's office should show the credit of $12,000 given for the exemption under Section 2(f), supra, against the fair and reasonable market value where the property is located in one county. If the property owned by a blind person is located in more than one county and a portion of said exemption is

claimed in more than one county, the assessment sheet in the tax assessor's office in each county should show that portion of the $12,000 exemption claimed in each county, the total exemption in all counties not to exceed $12,000.

Very truly yours,
MacDONALD GALLION
Attorney General

October 25, 1967

Dr. Ira L. Myers

State Health Officer
Department of Public Health
CAPITOL

Tuberculosis Sanatoria—Act No. 343, 1967 Legislature Appropriation.

Any amount appropriated by the Legislature over and above an amount to satisfy the State subsidy for the treatment of indigent patients in tuberculosis sanatoria may be allotted by the Health Department to such sanatoria for other purposes.

Opinion by Assistant Attorney General McQueen.

Dear Dr. Myers:

Your request for an official opinion, bearing date of October 4, 1967, is as follows:

"The Tuberculosis Sanatoria in Alabama, as you know, are partially financed by a subsidy provided in Section 199, Article 2, Chapter 6, Title 22, Code of Alabama, 1940, as amended. This State subsidy is paid to each district tuberculosis sanatorium established pursuant to the provisions of Chapter 6, Article 3, Title 22, Code of Alabama, 1940, as amended.

"In addition to the foregoing subsidy, Act No. 272, 1966 Special Session (H. 278, introduced by Brewer, et al), provides an additional subsidy beginning June 1, 1966, and ending September 30, 1967. The annual sum of $276.00 per each bed licensed by the State Health Department to that particular sanatorium was authorized. Funds after September 30, 1967, were not provided by this Act. The necessary funds to continue this Act were requested by the State Health Department in its regular Budget Request for this biennium beginning October 1, 1967. The General Appropriations bill carries a specific appropriation for the tuberculosis subsidy in an amount sufficient to provide a subsidy of $7.25 per day per licensed bed in accordance with Act No. 343 of the 1967 Regular Session of the State Legislature which was signed by the Governor on September 5, 1967.

"May the State Health Department pay to the tuberculosis sanatoria, beginning October 1, 1967, the full amount of $7.25 per day per licensed bed as authorized by Act No. 343 and in addition, pay the $276.00 annually per each bed licensed by this Department in monthly installments since the required funds for both payments were appropriated by the Legislature in our General Appropriations Bill (Act No. 256, 1967 Regular Session)?

"I trust your opinion will be favorable to the Sanatoria. Your early advice is earnestly solicited in behalf of the continuance of our tuberculosis treatment program in this State."

My answer to your inquiry is in the affirmative.

The Legislature in the general appropriation bill for the biennial 1968-69 appropriated to the Department of Health the sum of $3,379,-353.00 to be used by the Health Department for treatment of tuberculosis and chronic lung disorders.

The only act of the Legislature dealing with this appropriation, and how it is to be expended, is Act No. 343 of the Regular Session of the Legislature of 1967. This act relates to the State subsidy for the care of indigent patients in tuberculosis sanatoria. The act also provides that out of the amount appropriated in the general appropriation bill, $7.25 per day shall be used for each licensed bed in such sanatoria for the treatment and care of indigent patients in such sanatoria. This bill expressly states that it is a subsidy to said sanatoria, and further provides in no instance shall the State's contribution exceed $7.25 per diem for each licensed bed maintained by the sanatoria.

The State Department of Health in its budget request certified that several tuberculosis sanatoria of the State maintained 1,175 licensed beds. Multiplying this figure by $7.25 a licensed bed and then multiplying the results by 365 days amounts to $3,109,343.75.

This is the amount necessary to satisfy the requirements of Act No. 343, supra, as to the subsidy.

The total amount appropriated for this purpose for the treatment of tuberculosis and chronic lung disorder in the general appropriation bill is $3,379,353.00. Subtracting the sum of money necessary to satisfy the subsidy required by Act No. 343, supra, from the total amount appropriated, it appears that a balance remains in the amount of $270,009.25.

Certain it is that the Legislature intended that this two hundred thousand odd dollars be used by the State Health Department in furthering the work carried on by the tuberculosis sanatoria in the State. It is inconceivable that the Legislature intended this amount to lie idle and not be put to some useful and beneficial health work.

You are, therefore, advised that, in my opinion, this two hundred thousand odd dollars may be allocated by the Department of Health

to the several sanatoria to be used for administrative costs of the sanatoria, or for any other purpose designated by the Health Department.

The Health Department may allot this money annually for each licensed bed, or if it so desires it may allocate this money in monthly installments. The only requirement in regard to this balance of two hundred thousand odd dollars is that the Health Department use it in furtherance of the very beneficial services performed by the tuberculosis sanatoria in treatment of tuberculosis and chronic lung disorders.

If the number of licensed beds upon which the above calculation is made is larger or smaller than the figures used in this opinion, then the allocation will have to be adjusted accordingly.

Yours very truly,
MACDONALD GALLION
Attorney General

October 25, 1967

Honorable Ralph W. Roberts
State Registrar of Vital Statistics
Department of Public Health
State Office Building
Montgomery, Alabama 36104

Burial — County Boards of Health — Municipalities.

A municipality is not authorized to provide by ordinance fees for the issuance of burial and removal permits where a part of such fees is disbursed to the County Board of Health and no part thereof is payable to the municipality.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated September 11, 1967, is as follows:

"A question has arisen regarding ordinances adopted by the City of Mobile and effects upon provision of the state law governing the issuance of burial disinterment permits. Attached is related correspondence for your perusal.

"Several Code sections of Title 22 are identified for your convenience: Section 19 — provides for a statewide system of vital statistics;

"Section 23 — provides for a burial permit and prohibits a local registrar from receiving any fee for issuance of same;

"Section 37—provides that all forms used in carrying out the vital statistics responsibilities shall be furnished by the State Registrar;

"Section 43—Provides for uniform compliance in every part of the State.

"Mobile County is served by a Local Registrar of Vital Statistics who is not an employee of the Health Department. She is responsible for operation of the statewide system of vital statistics as it applies to Mobile city and county.

"The City of Mobile adopted ordinances which provide a $5.00 fee for issuance of burial permits and disinterment permits of special design. Even though the local registrar may not personally issue the Mobile City permits, and collect the fees, there is question as to whether or not these ordinances supersede or are incompatible with enforcement of the State law."

The ordinances of the City of Mobile, to which your request refers, provide $5.00 fees for burial permits and disinterment or transfer permits issued by the local registrar of vital statistics. One-fifth of the proceeds received from the issuance of burial permits is disbursed to the City sexton and the balance of the proceedings derived from these permits is disbursed to the Mobile County Board of Health. No part of said fees is payable to the City of Mobile.

A municipality is a mere instrumentality of the State and its powers are derived from and must be conferred by the Legislature. **Town of Graysville v. Johnson,** 33 Ala. App. 479, 34 So. 2d 708. A municipal corporation may exercise only those powers granted in express words, those necessarily or fairly implied in or incident to powers expressly granted, or those essential to the declared objects and purposes of the corporation. **City of Bessemer et al. v. Huey,** 247 Ala. 12, 22 So. 2d 325, **Johnson v. City of Sheffield et al.,** 236 Ala. 411, 183 So. 265.

There is no statute in this State which expressly confers the power upon a municipality to exact fees for burial or removal permits and disburse the proceeds of such fees to the County Board of Health and the City sexton, and there is no statute from which such power can be implied.

Therefore, I am of the opinion that the ordinances of the City of Mobile, here considered, are not valid.

The opinion expressed herein is strengthened by the fact that Title 22, Section 23, Code of Alabama 1940, provides that no local Registrar of Vital Statistics shall receive any fee for the issuance of burial or removal permits.

Very truly yours,
MacDONALD GALLION
Attorney General

October 30, 1967

Honorable Ruben K. King, Commissioner
State Department of Pensions and Security
Administrative Building
Montgomery, Alabama 36104

Pensions and Securities, Department of — Schools — Licenses.

The State Department of Pensions and Security is required pursuant to its statutes to license day care facilities, and such facilities are not exempt from the licensure authority of the State Department of Pensions and Security if some academic instruction is carried on in such facilities.

Head Start projects are day care services and are subject to the licensure authority of the State Department of Pensions and Security.

Where day care facilities have the related services of having as many as twenty-five children receiving actual scholastic instruction, such facilities should be referred to the Building Commission to secure approval of the structure.

The State Department of Pensions and Security is not required to license a private school where the primary purpose of such school is that of providing scholastic instruction.

Opinion by Assistant Attorney General Stapp.

Dear Mr. King:

I have received your letter of September 14, 1967, in which you request an official opinion of this office as follows:

"Under the authority of Act No. 703, General Acts of Alabama 1951, and Act No. 543, Acts of Alabama 1923, p. 723, as amended by Act No. 292, 1961 Ex. Sess., p. 2349 (Title 49, Section 62, et seq., Code of Alabama 1940, recompiled 1958), this department has licensure functions relating to childcaring institutions and agencies. Some question has been raised by persons outside this agency as to whether facilities providing certain care for children come within the purview of our licensure authority.

"I would appreciate it if you would give me your opinion as to whether a facility operating as described below is required to be licensed by this agency:

"The facility, privately owned and operated, cares for approximately 30 children, ranging in age from 2½ years to school age. Some of the children are kept for half a day (4-5 hours); others are kept for the full day (8-10 hours); none are kept overnight. The activities carried out are in preparation for later academic instruction.

Such activities include, for example, listening to stories and music and going on simple field trips. Reading, writing and arithmetic are not usually a part of the program content of a day care facility. The facility is not under the supervision of the Department of Education or other agency.

"This agency has been asked by persons operating such facilities as to whether they fall within the exception stated in the licensing statute, viz., ' . . . except schools wherein children are given scholastic instruction, ...' (Title 49, §66, as amended). They have also raised question as to whether they are exempt from licensure because they do not care for dependent, neglected or delinquent children (see Title 49, Sections 64 and 65). I am attaching memoranda from former legal advisors to this department setting out their opinions relative to this question.

"This agency also currently licenses certain Head Start facilities funded by the Office of Economic Opportunity. Some of the purposes for which the Head Start programs are operated, as stated by Project Head Start, Community Action Program, Office of Economic Opportunity, Washington, D.C. are as follows: 'Improving the child's health. Helping the child's emotional and social development . . . Improving and expanding the child's mental processes . . . Helping children to get wider and more varied experiences . . . Increasing the child's ability to get along with others . . . .' The year-round Head Start facilities we license are those not under the supervision of the Department of Education. Those of which the Department of Education has assumed supervisory responsibility have not been included in our licensing activities. We consider that the purposes of the Head Start and other child-caring facilities for preschool children are the same and we license them under the same standards. Head Start like other day care services provides care for children for a full day— in any event, more than four hours a day. Some children receive care for eight to ten hours as needed while the parents are employed or unable to provide care in their homes.

"I would also appreciate your opinion as to whether the above described Head Start facilities and private day care services currently being licensed by this agency under the statutes above cited are subject to the provisions of the building code provided for by Act No. 290, Acts of Alabama 1945, p. 480 (Title 55, Sections 367(7) et seq., Code of Alabama 1940, recompiled 1958) in instances when twenty-five or more persons are involved. This question is relevant to the responsibilities of this agency since our minimum requirements for licensing day care centers currently include, among other requirements, a provision that all local ordinances, such as fire, health, building, zoning, etc., be complied with before a license is issued by this department. If, therefore, such day care facilities constitute 'any private building in which twenty-five or more persons are congregated regularly for the purpose of instruction in any branch of knowledge,' (Title 55, Section 367(8), supra), we

will wish to revise our licensure regulations to provide that all such facilities must be approved by the Building Commission.

"I am attaching a copy of regulations promulgated by this agency entitled Minimum Standards for Day Care Centers. Also attached is a copy of a memorandum of agreement entered into October 5, 1945, between the State Department of Education and Public Welfare. Since this agreement by its nature constitutes interpretation by the two agencies of their statutory responsibilities, it may be useful in construing the statutory provisions.

"I am also attaching a memorandum of agreement regarding day care services and preschool education received in this office from the Department of Health, Education and Welfare which sets out the concept of day care as understood by the Department of Health, Education and Welfare. This agency uses Federal funds to purchase day care for needy children in licensed day care facilities. Receipt of Federal child welfare service funds is available to the department contingent upon the approval of a basic annual plan for the expenditure of such funds. The department receives child welfare funds and expends such funds for day care services with a commitment that such funds are used only in day care facilities which are licensed by the State or are approved as meeting the standards of such licensing. Unless day care facilities, such as the facilities about which question is being raised, are licensed, funds cannot be expended for children receiving care in such facilities."

You have asked three questions relating to the licensing responsibilities of the State Department of Pensions and Security in relationship to other responsibilities performed by other state agencies. Your first question sets out a description of a type of day care service wherein certain preschool activities are carried on and you ask if such facility is required to be licensed by your Department. In analyzing the licensure authority and responsibility of the State Department of Pensions and Security, it is necessary to look at the pertinent provisions of Act No. 703, General Acts of Alabama 1951. Section 6 of Act No. 703, supra, (Title 49, Section 17(7), Code of Alabama 1940, as recompiled 1958), provides in pertinent part as follows:

"The aim of the state department shall be the promotion of a unified development of welfare activities and agencies of the state and of the local governments so that each agency and each governmental institution shall function as an integral part of a general system. In order to carry out effectively these aims it shall be the duty and responsibility of the state department to:

. . . (13) **License annually all institutions and agencies except those under state ownership and control, caring for, receiving, or placing minor children and to revoke such license for cause."**

[Emphasis supplied.]

This provision is set out separate and apart from the provisions relating to dependent, neglected or minor children inasmuch as Sub-

section 12 and Subsection 14 are concerned with the responsibilities and authority concerning these children. This is in addition to the responsibilities set out in Title 49, Sections 62-90, Code of Alabama 1940, Recompiled 1958, as amended. The most recent statutory amendment affecting the licensing authority of the State Department of Pensions and Security referred to in your request is Act No. 292, 1961 Ex. Sess., p. 2349, (Title 49, Section 66, Code of Alabama 1940, Recompiled 1958, as amended). This section provides as follows:

> "Licenses to agencies or institutions.—All societies, agencies and institutions, public or private, except those under state ownership and control and except schools wherein children are given scholastic instruction, receiving or caring for children, shall be required to obtain annually a license from the state department of pensions and security, but no agency or institution shall be licensed until the department is reasonably and satisfactorily assured of the following points: The present need for the proposed agency or institution; the good character and intentions of the applicants; that the organizations shall be adequately financed to be effective; that capable trained or experienced workers will be employed; that the methods to be used and disposition to be made of the children served will be wise, altruistic, judicious, and in accord with the welfare of society; that there is a probability of permanence in the proposed child welfare organization or institution."

The pertinent feature in this amendment is that the general licensure authority is restricted by the state department inasmuch as schools where children are given scholastic instruction are taken out of the purview of the licensing authority. However, the class of children affected by this section is enlarged inasmuch as prior to 1961 this section related only to dependent, neglected or delinquent children and this is specifically deleted from the 1961 amendment. This section, therefore, should properly be read in pari materia with Section 6 of Act No. 703, supra, quoted above. Even though instruction, which under some standards could be considered scholastic instruction in the course of a service offered as a day care service, is offered, this would not defeat the primary purpose of such a service. In analyzing a day care service one must look to the situation of the child. This clearly would include children who must be out of the home for a part of the day because the parents or guardian cannot stay at home to care for the child. This would be the situation of a child with a mother who must work. It would be unreasonable to hold that a day care operator could come out from under the licensing authority of the State merely because certain instruction or "learning" is also imparted to the child. To hold otherwise would permit day care operators to avoid the licensing authority of the State by merely showing that they teach children simple ABC activities as might frequently go on in a nursery school or kindergarten. Obviously the intent of the laws and standards promulgated thereunder would be defeated if this could be done.

The opinion furnished this office holds that the State Department of Pensions and Security is vested with the authority and responsi-

bility for licensing day care services to children. It is clear that the Department of Health, Education and Welfare has acted on this authority and, according to the memorandum furnished this office by your office, is furnishing Federal funds based on such understanding. For the purpose of this opinion, the definition of day care will serve as a proper definition of the functions undertaken by your agency. This description furnished in the Memorandum of Agreement regarding day care services and preschool education set out by the Commissioner of Welfare in her communication to you of January 6, 1965, states in pertinent part as follows:

> "The essential function of day care is to give care and protection to children as a supplement to parental care. Day care services may be provided through family day care in the home of another family or through group care in a day care center for children who can benefit from a group experience. For preschool children care may be provided throughout the work day. For children of school age care is provided for those hours in the work day when school is not in session. In either case the care is provided only when parents are unable to provide the needed parental supervision at home."

Although the authority to license institutions is statutory and governed by State law, the intent of the statutes is certainly ascertainable by construing such statutes in pari materia with other state statutes. In addition to the authority given your department with respect to child welfare matters in Subsections 10, 12, 13, 14 and 15 of Section 6 of Act No. 703, supra, there is additional responsibility in the field of child welfare by virtue of the provisions of Subsection 5 of Section 6, supra. This subsection read with a portion of the beginning part of the section states as follows:

> "The aim of the state department shall be the promotion of a unified development of welfare activities and agencies of the state and of the local governments so that each agency and each governmental institution shall function as an integral part of a general system. In order to carry out effectively these aims it shall be the duty and responsibility of the state department to: . . . (5) Act as the agent of the federal government in welfare matters of mutual concern, and in the administration of any federal funds granted to the state to aid **in the furtherance of any of the functions of the state department, and be empowered to meet such federal standards as may be established for the administration of such funds** . . . ." [Emphasis supplied.]

It has been held by this office that your State Department does have the authority to meet Federal standards which may be established for the administration of State and Federal funds. (See Quarterly Report of Attorney General, Volume 111, page 55, and Quarterly Report of

Attorney General, Volume 60, page 147.) This is obviously true in child welfare matters as well as in public assistance since the statute refers to **functions of the State Department.** This would be true of any of the Department's statutory functions.

It seems clear, therefore, that it is the legislative intent that your department have authority and responsibility to license these types of services pursuant to the statutory authority above cited. The example referred to in your request is within the scope of this statutory licensure law. I have further reviewed the minimum standards for day care centers furnished me by your office which set out the standards prescribed and promulgated by the State Board of Pensions and Security. From the provisions of Act No. 703, supra, and the provisions of Title 49, Article 2, Code of Alabama 1940, Recompiled 1958, with pertinent amendments, it is my opinion that the department has statutory authority to prescribe these standards and license these services in accordance therewith.

You have asked if the exception stated in the amendment to the licensure law exempts those day care services wherein certain academic instruction is given. One must look at the total purpose of the services provided and not merely collateral functions undertaken in connection with a broad overall purpose. I have examined the legal opinions issued by former Assistant Attorneys General to the State Department of Pensions and Security relating to the department's authority to license day care centers and the memorandum agreement between the former Commissioner of your department and the Assistant Superintendent of Education. I am in agreement that the department under the present statute has the duty and responsibility to license these services even when operators who offer day care services also offer certain academic preschool activities. It would appear that the primary purpose of a service offering care to children whose parents or guardians cannot keep them at home during the working day is "care" and not scholastic instruction.

The definition furnished me setting out the purpose of the Head Start services clearly falls within the purview of your licensing authority in situations where care is offered a child even when certain preschool training is offered the child in the course of the day. It seems clear that at the present time these services are not concerned with scholastic matters, as defined in Alabama, but relate to the development of the child's total person. Nevertheless, they are serving a child-caring function and fall within the purview of the licensing authority of your department inasmuch as they provide a child a place to stay because of parental absence.

Some of the day care facilities may also fall within the authority of the Building Commission. In reviewing the interagency agreement regarding day care services and preschool education, there is clearly a different concept embodied in day care service and preschool education. The essential function and purpose of preschool education is the training, education and development of the child. The word "school"

is a generic term denoting an institution or place for instruction or education. **State ex rel. Johnson v. Boyd,** 28 N.E.2d 256, 264, 217 Ind. 348; **State ex rel. Fronton Exhibition Co. v. Stein,** 198 So. 82, 87, 144 Fla. 387; **Bastendorf v. Arndt,** 287 N.W. 579, 580, 290 Mich. 423, 124 A.L.R. 445. In **Rivkind v. State, ex rel. Gibson,** 32 So.2d 330, 331, 159 Fla. 553, it has been held that "a kindergarten nursery is not a 'school' within ordinance and statute regarding location of place of business where liquor is sold." In distinguishing types of services which are not schools, it has also been held as follows:

> "Schools for boys, primary purpose of which was treatment and rehabilitation of delinquent or maladjusted boys, was not a 'school' within zoning ordinance."
>
> **Wiltwyck School for Boys, Inc. v. Hill,** 219 N.Y.S.2d 161, 163, 14 A.D.2d 198.
>
> "Use of local Red Cross chapter headquarters, located in converted 14-room frame house, for giving of Red Cross classes to individuals or groups, did not make building a 'school' within municipal zoning ordinance."
>
> **American Nat. Red Cross v. Shotmeyer Bros., Inc.,** 175 A.2d 646, 650, 70 N.J. Super. 436.

Under this reasoning the usual day care service as well as the "Head Start" program would not need to be approved by the Building Commission. Obviously, the Head Start program is designed to prepare the child to later become equipped to receive academic or scholastic instruction. According to your letter, the purposes of Head Start are: "Improving the child's health. Helping the child's emotional and social development . . . Improving and expanding the child's mental processes . . . Helping children to get wider and more varied experiences . . . Increasing the child's ability to get along with others . . . ." It appears that the purpose of the Head Start program is that of a pre-scholastic service and its major focus is on helping the child become culturally ready to later receive instruction in the various branches of knowledge. Head Start facilities, therefore, would not need to be approved by the Building Commission.

However, there are some day care services which may have the related service of having some of the children receive actual scholastic instruction, such as would be taken in the first or second grades of some private or public school. Where this type of service is given and meets the test of "Scholastic Day" as set out in Title 52, Section 1, Code of Alabama 1940, Recompiled 1958, such service should clearly be referred to the Building Commission. Where as many as twenty-five are receiving this type of scholastic instruction, you should refer these day care centers to the Building Commission for its approval of the structure. In the event any day care service states that such service is providing "a scholastic service" to children, I would also refer these services to the Building Commission and secure its approval of the

structure prior to issuing a license (Title 55, Section 367(8), Code of Alabama 1940, Recompiled 1958) I would, therefore, recommend that you revise your licensing regulations to provide that all such facilities which in addition to day care offer a service in which twenty-five or more children are congregated regularly for the purpose of receiving scholastic or other instruction also secure the approval of the Building Commission. You would not be required to license a private school where the primary purpose of such facility is that of providing scholastic instruction.

Yours very truly,
MacDONALD GALLION
Attorney General

November 2, 1967

Honorable Clarence Nance
Chairman, Madison County Board of Registrars
Madison County Courthouse
Huntsville, Alabama 35801

Boards of Registrars — Elections — Criminal Law — Voters and Voters Lists.

1. Conviction of crime of indecent exposure is a crime involving moral turpitude, disqualifying a person from registering and from voting.

2. Conviction of the crime of indecent molestation of children, being punishable by imprisonment in the penitentiary, is a crime disqualifying a person from registering and voting.

Opinion by Assistant Attorney General Hall.

Dear Mr. Nance:

Your letter of October 18, 1967, requesting my opinion regarding the eligibility of certain persons to register and to vote is as follows:

"Our inquiry concerns the offenses of indecent exposure and child molestation as to their effect, upon conviction, on eligibility to register and to vote.

"We are assuming that these two offenses fall within the definition of 'involving moral turpitude' as set out in the Constitution and Code concerning offenses which disqualify a person to register or, if registered, to vote.

"We have at this time an application from a person convicted of one of these offenses.

"We would appreciate as early a reply as possible as to whether or not we are assuming properly that conviction of either of these offenses is disqualifying."

Both Constitution of Alabama 1901, Section 182, and Title 17, Code of Alabama 1940 (Recompiled 1958) provide that persons who have been convicted of "any crime punishable by imprisonment in the penitentiary, or of any infamous crime or crime involving moral turpitude" shall be disqualified both from registering and voting.

Title 14, Section 326(1), Code of Alabama 1940 (Recompiled 1958) provides as follows:

> "It is unlawful for any person to expose or exhibit, or to procure another to expose or exhibit, his sexual organs or private parts in any public place or on the private premises of another, or so near thereto so as to be seen from such private premises, in a vulgar and indecent manner.
>
> "Any person who violates the provisions of this section may, on conviction, be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than twelve months, or fined not more than five hundred dollars, or both."

Title 14, Section 326(2), Code of Alabama 1940 (Recompiled 1958) provides as follows:

> "Any person who shall take or attempt to take any immoral, improper, or indecent liberties with any child of either sex under the age of sixteen years, with intent of arousing, appealing to, or gratifying the lust or passions or sexual desires, either of such person or of such child, or of both such person and such child, or who shall commit, or attempt to commit any lewd or lascivious act upon or with the body, or any part or member thereof, of such child, with an intent of arousing, appealing to, or gratifying the lust or passions or sexual desires, either of such person or of such child, or of both such person and such child, shall, upon conviction, be imprisoned in the penitentiary for not less than one nor more than five years."

Your inquiry involves separate consideration of the eligibility to register and to vote of persons who have been convicted of each of these crimes.

First, the question arises as to whether the crime of indecent exposure is an "infamous crime or crime involving moral turpitude." A crime involving moral turpitude has been defined as "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowmen or to society in general." 21 Am. Jur. 2d, Criminal Law, Section 24, Page 109; **Nelson v. State,** (Ala. App.) 44 So. 2d 802, 805; **Moore v. State,** 12 Ala. App. 243, 67 So. 789, 791.

In my opinion, although the crime of indecent exposure as defined by Title 14, Section 326(1), supra, is not one which was considered **mala in se** at common law, but is **mala prohibitum** under our statute, it is a crime which consists of an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowmen or to society in general, contrary to the accepted and customary, such

as to be a crime involving moral turpitude, and, therefore, a conviction for violation of this statute would disqualify a person from registering and voting in this State.

Second, since the crime of indecent molestation of children is one upon the conviction for which a person may be confined in the penitentiary for not less than one nor more than five years, and since Section 182 of the Constitution, supra, and Title 17, Section 15 of the Code, supra, both provide that conviction of a crime punishable by imprisonment in the penitentiary shall disqualify persons from both registering and voting, this likewise is a disqualifying crime.

Very truly yours,
MacDONALD GALLION
Attorney General

November 8, 1967

Honorable Ralph P. Eagerton
Chief Examiner
Examiners of Public Accounts
Montgomery, Alabama

State Institutions — Expenditures of Funds — Holiday Greeting Cards.

A public agency or institution of the State may not expend appropriated public funds for holiday greeting cards, nor may auxiliary income be expended for this purpose.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion bearing date of September 12, 1967, is as follows:

"For many years this department has taken the position that public agencies may not expend funds for holiday greeting cards such as Christmas. This rule has applied for all public agencies audited by this department. At the present time, many printing companies donate Christmas greeting letters or cards to the various public agencies. Several colleges, junior colleges and trade schools have recently raised the question of purchasing such greeting cards for the directors and presidents from auxiliary income; i. e.,vending machine receipts, student activity receipts, etc.

"I, therefore, request your opinion as to whether or not:

"(1) Any public agency may expend appropriated funds for holiday greeting cards.

"(2) Any public agency having auxiliary income may expend such income for holiday greeting cards.

"The greeting cards referred to are mailed to friends of the institution director and other public agencies. The name of the institution and/or its director appear on the cards."

My answer to both of your questions is in the negative.

The several colleges, junior colleges and trade schools mentioned in your request may only expend appropriated public funds for institutional purposes. The use of the words "institutional purposes" means only those purposes which are ordinarily included within that term such as maintenance, instructors' salaries, utilities, etc., and does not, in my opinion, cover the expenditure for holiday greeting cards.

You make reference in your request and ask also if auxiliary income may be expended for this purpose. I assume that you mean by auxiliary income institutional receipts. If this assumption be correct, all auxiliary income becomes public funds and may not be expended except for institutional purposes. Although such auxiliary income as referred to by you does not come within the purview of Title 55, Section 103, Code of Alabama 1940, it is my opinion that this section definitely designates such institutional receipts or auxilary income as public funds.

You are, therefore, advised that the public funds, auxiliary income or otherwise, may not be used for the purpose of purchasing greeting cards.

Yours very truly,
MacDONALD GALLION
Attorney General

November 13, 1967

Honorable T. C. Almon
Judge of Probate
Morgan County Court House
Decatur, Alabama

Filing Tax — Deeds — Mortgages.

No filing tax due on deed given in lieu of foreclosure of mortgage where mortgage tax has been paid.

Opinion by Assistant Attorney General Payne.

Dear Judge Almon:

Your request for opinion of this office dated January 24, 1967, is as follows:

"About two years ago a deed was filed in the Probate Office by John Doe for property worth more than $50,000.00. He executed a mortgage back to Richard Rowe for $50,000.00. Deed tax was paid on the deed and mortgage tax on the mortgage.

"The mortgage is now in default and Richard Rowe wants to deed it back to John Doe in lieu of foreclosure for the amount of the mortgage, to-wit: $50,000.00.

"Would you please advise me if I should collect a deed tax on this deed given in lieu of foreclosure."

I note in the second paragraph of your letter set out above that you indicate that "Richard Rowe wants to deed it back to John Doe in lieu of foreclosure." This is an inadvertence obviously as it is Richard Rowe who is the mortgagee according to your letter and, therefore, it would be John Doe who is desirous of giving the deed to Richard Rowe in lieu of foreclosure.

As indicated above, deed and mortgage tax was paid on those instruments when they were filed for record in your office some two years ago. You now wish an opinion as to whether or not you should collect tax, as provided by Title 51, Section 618, Code of Alabama 1940, (Recompiled 1958), on a deed given in lieu of foreclosure. Without unduly lengthening this opinion I think your request can best be answered by the application of well established principles of mortgage law.

When the mortgage was originally executed by the parties, the legal title to the property passed to and vested in the mortgagee, "Richard Rowe." When a mortgage is foreclosed the legal effect of such procedure is to cut off—**destroy**— the mortgagor's equity of redemption. **Mallory v. Agee,** 147 So. 881, 226 Ala. 596, 88 A.L.R. 1107.

Such being the case, it would seem to logically follow that a deed given in lieu of, or in place of, foreclosure, would have no different legal effect than the actual foreclosure itself. The deed given in lieu of foreclosure, no matter the wording, under the circumstances stated, does nothing more or less than to cut off the mortgagor's equity of redemption. Such procedure curtails the costs and expenses of following the usual foreclosure procedure. This is not unusual in cases of this nature.

In view of the above, your question is answered in the negative.

Very truly yours,
MacDONALD GALLION
Attorney General

November 15, 1967

Mr. Bill Cassity
Administrator
Alabama Liquefied Petroleum Gas Board
660 Adams Avenue
Montgomery, Alabama 36102

Liquefied Petroleum Gas Board — Words and Phrases — Butane Gas — Liquefied Petroleum Gas.

1. MAPP gas is not a "liquefied petroleum gas" as that term is defined in Section 1 of Act No. 220, General Acts of Alabama 1965, p. 305.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an opinion of this office bearing date of November 3, 1967, is as follows:

"The Liquefied Petroleum Gas Board is confronted with a problem as to whether this Board has jurisdiction over the sale and distribution of MAPP industrial gas.

"According to information furnished this Board by a representative of Dow Chemical Company, Camden, New Jersey, MAPP gas is a liquefied hydrocarbon fuel gas consisting predominantly of methyl-acetylene propadiene (65-68% by volume); the balance being pavaffinic and alefenic C-3 and C-4 hydrocarbons. The predominant constituent is an acetylenic compound and thus is not a petroleum product.

"MAPP gas is generally used in conjunction with pure oxygen for welding and cutting of steel. It is not used as a commercial fuel and, therefore, is not sold in competition to propane for this use.

"The physical characteristics of this material are similar to propane but the maximum propane content is 20% which is added as a stabilizing material.

"Section One of Act No. 220 of the Regular Session of the 1965 Alabama Legislature defines liquefied petroleum gas and thus determines the jurisdiction of the Alabama Liquefied Petroleum Gas Board as 'liquefied gas shall mean and include any material which is composed predominantly of any of the following hydrocarbons, or mixtures of the same; propane, propylene, butanes (normal butane or isobutane), and butylenes'.

"The Liquefied Petroleum Gas Board will appreciate your opinion as to whether MAPP gas is a liquefied petroleum gas as that term is defined in the aforementioned Act.

"Your earliest reply to this request will be appreciated so that we might know whether this Board is authorized to exercise jurisdiction in this area."

In my opinion the answer to your question is in the negative.

Section 1 of Act No. 220, General Acts of Alabama 1965, p. 305, provides, in pertinent part, as follows:

"Section 1. As used in this Act, 'liquefied petroleum gas' shall mean and include any material which is composed predominantly of any of the following hydrocarbons, or mixtures of the same; propane, propylene, butanes (normal butane or isobutane), and butylenes; * * * "

The question then arises, does an industrial gas, commonly called MAPP gas, come within the definition of a "liquefied petroleum gas" as defined in Section 1 above?

To obtain this answer, we first asked the Alabama Liquefied Petroleum Gas Board what construction, if any, it had given Section 1, supra, so far as MAPP gas was concerned.

I was advised that the Alabama LP Gas Board had administratively decided that MAPP gas was not a "liquefied petroleum gas" as it is defined in Section 1, supra, and, as a consequence, had not required dealers of MAPP gas to obtain a permit before doing business in Alabama.

This same administrative construction as regards MAPP gas has been placed on similar laws in the States of Louisiana, Texas, Mississippi and Michigan.

The 1967 edition of the National Fire Protection Association's Standard No. 58, relating to liquefied petroleum gases, has been adopted by the Alabama LP Gas Board.

In a letter to Dow Chemical Company under date of June 22, 1967, the National Fire Protection Association said the following about Standard No. 58 as it relates to MAPP gas:

> " * * * NFPA No. 58 defines LP-Gases in the first paragraph of its Introduction and MAPP does not meet this definition.
>
> "Nevertheless, according to the aforementioned authorities, representatives of the Dow Chemical Company are recommending that NFPA No. 58 be applied to ASME container storage of MAPP gas and, further, that NFPA No. 58 be used for other facets of such an installation with, of course, appropriate recognition of system materials compatibility.
>
> "We have, of necessity, had to advise these inquirers that NFPA No. 58 was not written with MAPP or similar materials in mind, that MAPP is not LP-Gas as defined in NFPA No. 58, and that we have rendered no decision as to the applicability of the provisions in NFPA No. 58 to MAPP gas installations."

To round out our research, we deemed it necessary to obtain a chemical analysis of MAPP gas. We engaged Dr. John J. Monagle, Head of the Chemistry Department at the University of Alabama to give us his opinion as to whether or not MAPP gas came within the definition of "liquefied petroleum gases" as defined in Section 1 of Act No. 220, supra.

He states, in part, as follows:

> "In my opinion MAPP gas does not fall within the Section 1 of the Alabama Statute, defining liquefied petroleum gas. Chemically, it is a much more reactive substance than the components which make up the liquefied petroleum gas as defined by Section 1. In

addition, it seems to me to be obvious that the propane and propylene in MAPP gas are present to serve as stabilizers for an otherwise heat and shock sensitive material."

Based on the chemical analysis of Dr. Monagle, the administrative construction placed on laws similar to Act No. 220, supra, by other states as relates to MAPP gas and the attitude of the NFPA towards MAPP gas, it is my opinion that the industrial gas commonly called MAPP gas is not a "liquefied petroleum gas" as that term is defined in Section 1 of Act No. 220, supra.

Very truly yours,
MacDONALD GALLION
Attorney General

November 16, 1967

Honorable Claude D. Kelley
Director of Conservation
Administrative Building
Montgomery, Alabama

Game and Fish — Licenses — Military and Naval Affairs — Vietnam War.

No person serving as a member of the armed forces of the United States shall be required to procure any type of hunting or fishing license when the United States is engaged in a war; the Vietnam conflict is such a "war."

Opinion by Assistant Attorney General Bonham.

Dear Sir:

Your request for an official opinion bearing date of November 2, 1967, is as follows:

"Your attention is directed to Act No. 121, Acts of Alabama, Second Special Session 1965, which levied a special license for hunting deer and wild turkeys on state-operated wildlife management areas.

"This office would appreciate being advised as to whether or not armed forces personnel on active duty are required to purchase these licenses."

Title 8, Section 41(1), Code of Alabama 1940, Recompiled 1958, provides as follows:

"No person serving as a member of the armed forces of the United States of America shall be required to procure a hunting license or a fishing license to hunt or fish within the state of Alabama during any period of time in which the United States of America is engaged in a war."

In two prior opinions, this office has held that the Vietnam conflict is a "war" with a foreign state. (See Quarterly Report of the Attorney General, Volume 119, page 39, and Quarterly Report of the Attorney General, Volume 121, page 46.)

It, therefore, follows that so long as the Vietnam war continues, members of the armed forces of the United States are not required to procure any type of hunting or fishing licenses to hunt or fish within the State of Alabama. This would include a license to hunt deer and wild turkeys on state-owned or operated wildlife management areas.

Very truly yours,
MacDONALD GALLION
Attorney General

November 16, 1967

Honorable Joe J. Phillips, Sr.
Judge of Probate
Talladega County
Talladega, Alabama

Probate Court—Chief Clerk—Insane Persons.

Chief Clerk of Probate Court does not have authority to conduct an inquisition of lunacy where there is a contest.

Opinion by Assistant Attorney General Clark.

Dear Judge Phillips:

I have your request for an official opinion bearing date of November 2, 1967, which is as follows:

"A question has arisen as to the authority of the Chief Clerk in the office of the Judge of Probate, in the name of the Judge of Probate to conduct a sanity inquisition as authorized by Title 21, Code of Alabama, Recompiled, 1958, when the person alleged to be of unsound mind nor any other person in interest contests the proceeding.

"The same section requires the appointment of a Guardian Ad Litem if the person alleged to be of unsound mind is not represented by counsel.

"Title 13, Section 300, shows the authority of the Chief Clerk of the Probate Court and provides in part:

"5. To do all other acts and things and perform all of the duties ministerial and judicial when there is no contest that the Judge of Probate could do and perform except to hear and grant writs of habeas corpus and writs of certiorari.

"Assuming that the inquisition proceedings were properly begun upon a petition as provided by Title 21, Section 11 and that

the requirements of Sections 12, 13, and 14 were compiled with and assuming further that no contest to the proceedings were made and the jury returned a verdict finding the facts alleged in the petition were true and that the person was of unsound mind, and the entire proceedings were conducted by the Chief Clerk, in the name of the Judge of Probate, were these proceedings valid and sufficient?

"A second related question is: Does the appointment of a Guardian Ad Litem to represent the person alleged to be of unsound mind and his acceptance and denial of the allegations, amount to a contest of the sanity inquisition, so as to remove it from the authority given the Chief Clerk to act in the name of the Judge of Probate as shown by the part of Title 13, Section 300 set out above."

Title 21, Section 11, Code of Alabama 1940, provides:

"§11. Inquisition proceedings. — Upon the petition of any of the relatives or friends of any person alleged to be of unsound mind, setting forth the facts and name, sex, age, and residence of such person, accompanied by an affidavit that the petitioner believes the facts therein stated to be true, the court of probate of the county in which such person alleged to be of unsound mind resides, must appoint a day, not more than thirty days from the presentment of such petition, for the hearing thereof. If, on the hearing of such inquisition, the person alleged to be of unsound mind is not represented by counsel, the court shall appoint a guardian ad litem to represent and defend for him."

Your first question assumes that no contest to the inquisition proceedings were made. However, in my opinion, under the facts presented there is a contest.

In **Smith v. Smith,** 254 Ala. 404, 48 So. 2d 546, the Supreme Court of Alabama held:

"In Section 11, Title 21, Code of 1940, it is contemplated that the alleged non compos mentis may be represented by counsel. It is only when such person is not represented by counsel that the court is obligated under the statute to appoint a guardian ad litem to represent and defend such person. It is obvious that it is the duty of counsel to represent and protect the interests of the person alleged to be of unsound mind, just as if counsel was a guardian ad litem. . . . "

Since a guardian ad litem accepts his appointment, denies the allegations and demands strict proof thereof, and his retained counsel is subject to the same duties and obligations in representing an alleged non compos mentis, it is my opinion that inquisition proceedings are contested judicial proceedings. As such, they do not come within the authority granted to the Chief Clerk of the Probate Court under provisions of Title 13, Section 300, Subsection 5, Code of Alabama 1940,

and if conducted by him would not be valid and sufficient. They must be tried before the Judge of Probate.

In my opinion, the appointment of a guardian ad litem, his acceptance of appointment, and his denial of the allegations amount to a contest of the proceedings and removes it from the authority granted to the Chief Clerk by Title 13, Section 300, Code of Alabama 1940.

Yours very truly,
MacDONALD GALLION
Attorney General

November 17, 1967

Mr. George A. Toulmin
License Commissioner
Mobile County
Post Office Box 1766
Mobile, Alabama 36601

Taxation — Ad Valorem Tax — License Tax — Soliders' and Sailors' Civil Relief Act.

The situs for ad valorem tax purposes of personal property of personnel in the military service is in the state of domicile of such personnel regardless of where they may be stationed in compliance with military or naval orders or where their personal property may be physically located.

Alabama may require personnel in the military service stationed in Alabama in compliance with military or naval orders to register and license their private passenger automobiles by the payment of $13.00 under the provisions of Title 51, Section 693, Code of Alabama 1940, as amended by Act No. 223, Special Session 1967, where they have not registered such automobiles and obtained license plates under the laws of their home state.

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an opinion dated October 27, 1967, is as follows:

"Attached hereto are two letters received early this week from Lt. Colonel Rudolph Sullivan, USAF, Deputy Staff Judge Advocate, in which questions are asked relative to our interpretation of certain provisions of the Soldiers and Sailors Civil Relief Act, as amended by Public Law 87-771 of the Congress, signed October 9, 1962. Of course, our office is not prepared to answer these questions. Therefore, we respectfully request

your opinion and advice so that we can pass the same on to Colonel Sullivan for his information.

"As you already know, I am not well versed in either the Federal law nor the statutes of the State of Alabama, but it seems that the questions may reasonably be stated briefly as follows:

"1. Is the office of License Commissioner for Mobile County, Alabama, legally authorized to register, and exempt from ad valorem taxation a motor vehicle of a non-resident serviceman, then serving outside the State of Alabama but who elects to, and actually does leave his family here in this State? Reference is made to section 514 (1) of the Soldiers' and Sailors' Civil Relief Act, as amended by Public Law 87-771, signed 9 October, 1962.

"2. Are the Judges of Probate and License Commissioners of the various counties of the State of Alabama required to assess and collect an additional $10 license fee (or tax) imposed by the amendment to Section 693 of Title 51 of the Code of Alabama of 1940, Recompiled 1958, by Act No. 223, of the 1967 Special Session of the Alabama Legislature and approved by the Governor May 10, 1967; if the property proposed to be assessed and taxed is the personally owned automobile of a non-resident serviceman stationed in Alabama at the time solely in compliance with military orders, and then sought to be licensed by such owner, in his name, for operation on the highways of this state?"

In order to advise you, it is necessary to consider the provisions of Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (Title 50, Section 574, USCA) which provides, in part, as follows:

"(1) For the purposes of taxation in respect of any person, or of his personal property, income or gross income, by any State, . . . such person shall not be deemed to have lost a residence or domicile in any State, . . . solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, . . . while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such persons by any State, . . . of which such person is not a resident or in which he is not domiciled, . . . personal property shall not be deemed to be located or present in or to have situs for taxation in such State, Territory, possession, or political subdivision, or district. **Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of**

residence or domicile, regardless of where the owner may be serving in compliance with such orders: . . . . Emphasis added.)

"(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof; Provided, That the license, fee, or excise required by the State, . . . of which the person is a resident or in which he is domiciled has been paid."

In Quarterly Report of the Attorney General, Volume 122, page 28, it was held that motor vehicles of nonresident personnel in the military service stationed in Alabama in compliance with military or naval orders on which an ad valorem tax lien has not attached are not subject to ad valorem tax in Alabama. See also Quarterly Report of the Attorney General, Volume 81, page 16, and **Dameron v. Broadhead,** 345 U. S. 322, 73 S. Ct. 721, 32 A. L. R. 2d 612.

In your question No. 1, the nonresident serviceman is serving outside of Alabama but his family is living in Alabama and desires to register his motor vehicle in Alabama. Is such motor vehicle exempt from ad valorem tax? Assuming such motor vehicle is not subject to a tax lien as discussed in Quarterly Report of the Attorney General, Volume 122, supra, the answer to this question is in the affirmative and is based on the underscored provisions of Section 514, supra, which was added to said section in an amendment thereto in 1962 by Public Law 87-771. This amendment makes it clear that the situs for ad valorem tax purposes of personal property, which includes motor vehicles, of personnel in the military service is in the state of domicile of such personnel regardless of where they may be stationed in compliance with military or naval orders or where their personal property may be physically located.

With respect to your second question, Act No. 223, Special Session 1967, which became effective October 1, 1967, amended Title 51, Section 693, as heretofore amended, Code of Alabama 1940, to read as follows:

"Section 693. The following annual license taxes and registration fees are hereby imposed, and shall be charged, on each private passenger automobile operated on the public highways of this state and on each motorcycle operated on the said public highways:

"(a) For each private passenger automobile $13.00
(b) For each motorcycle 7.00

"No private passenger automobile and no motorcycle shall be used on any public highway in the state unless the proper license tag therefor has been procured and is securely attached to the rear end thereof, such tag to be so attached right side up with the number thereof in an upright position and plainly visible.

"The purchaser of any motor vehicle requiring a tag shall have four days from the date of its acquisition within which to procure the required tag."

In the case of **California v. Buzard,** 86 S. Ct. 478, decided January 18, 1966, the Supreme Court of the United States considered the question raised by your inquiry and gave its interpretation of the proviso contained in Subsection (2) (b) of Section 514, quoted above. In holding that the state where a nonresident serviceman is stationed in compliance with military or naval orders may require such serviceman to register and license his motor vehicle under its laws where he has not registered his motor vehicle and obtained license plates under the laws of his home state, the Court stated:

"To assure that servicemen comply with the registration and licensing laws of some State, whether of their home State or the host State, we construe the phrase 'license, fee, or excise **required** by the State . . . ' as equivalent to 'license, fee, or excise **of** the State . . . ' Thus read, the phrase merely indicates Congress' recognition that, in one form or another, all States have laws governing the registration and licensing of motor vehicles, and that such laws impose certain taxes as conditions thereof. **The serviceman who has not registered his car and obtained license plates under the laws 'of' his home State, whatever the reason, may be required by the host State to register and license the car under its laws.**

"The proviso is to be read, at the least, as assuring that § 514 would not have the effect of permitting servicemen to escape the obligation of registering and licensing their motor vehicles. It has been argued that § 514(2)(b) also represents a congressional judgment that servicemen should contribute to the costs of highway maintenance, whether at home or where they are stationed, by paying whatever taxes the State of registration may levy for that purpose. We conclude, however, that no such purpose is revealed in the section or its legislative history and **that its intent is limited to the purpose of assuring registration.** Since at least the 2% tax here involved has been held not essential to that purpose as a matter of state law, we affirm the California Supreme Court's judgment. . . .

"Although the Revenue and Taxation Code expressly denominates the tax 'a license fee,' §10751, there is no persuasive evidence Congress meant state labels to be conclusive; therefore, we must decide as a matter of federal law what 'licenses, fees or excises' means in the statute. See **Storaasli v. Minnesota,** 283 U.S. 57, 62. **There is nothing in the legislative history to show that Congress intended a tax not essential to assure registration, such as the California 'license fee', to fall within the category of 'licenses, fees or excises' host States might impose if home State registration was not effected. . .**

> "Taxes like the California 2% 'license fee' serve primarily a revenue interest, narrower in purpose but no different in kind from taxes raised to defray the general expenses of government. It is from the burden of taxes serving such ends that nonresident servicemen were to be freed, in the main, without regard to whether their home States imposed or sought to collect such taxes from them. **Dameron v. Brodhead,** supra, . . . **we conclude that subsection (2)(b) refers only to those taxes which are essential to the functioning of the host State's licensing and registration laws in their application to the motor vehicles of nonresident servicemen. . . .**
>
> "Whatever may be the case under the registration and licensing statutes of other States California authorities have made it clear that the California 2% tax is not imposed as a tax essential to the registration and licensing of the serviceman's motor vehicle." (Emphasis supplied.)

Prior to Act No. 223, supra, the license fee for registering a private passenger automobile in Alabama was $3.00. Act No. 223 raised such license tag and registration fee to $13.00 and also amended Sections 695, 696, 697 and 703 of Title 51, all relating to license taxes and registration fees for motor vehicles other than private passenger automobiles. All money received from motor vehicle licenses and registration fees is distributed in accordance with the provisions of Title 51, Sections 712 and 713, Code of Alabama 1940, as amended by Act 223, supra. Section 10 of Act No. 223 provides as follows:

> "Section 10. It is the intention of the Legislature by the enactment of this act to raise revenue and to appropriate funds to pay the principal of and interest on bonds that may be issued by the Alabama Highway Authority, a public corporation existing under the laws of this state, for the purpose of constructing highways and bridges, to raise revenue and appropriate funds for other highway and bridge purposes and to raise revenue and appropriate funds to provide a program for road and street purposes of the counties and municipalities of this state."

The following is quoted from a letter attached to your inquiry dated October 17, 1967, to your office of the Staff Judge Advocate, Brookley Air Force Base, Alabama:

> "In reviewing the Substitute for H. B. 219, which amended Section 693, we have been unable to find any connection between the additional $10.00 tax and the defraying of costs of registration and licensing private motor cars. Rather, the bill as passed discloses that the purpose of the legislation is to raise revenue. Section 10 specifically states that it is the intent of the legislature
>
> " 'by the enactment of this act to raise revenue and to appropriate funds to pay the principal of and interest on bonds that

> may be issued by the Alabama Highway Authority. . . .' (Section 10)"

It should be pointed out that Section 693, as amended by Act No. 223, supra, does not levy a separate license tax and registration fee of $10.00 in addition to the former $3.00 tax but merely increases the license tax to $13.00, all of which, less the cost of collection as provided in Section 712, supra, is levied for the purposes as stated in Section 10 of Act No. 223. Therefore, if the Staff Judge Advocate at Brookley is right, a nonresident serviceman stationed in Alabama could secure an Alabama motor vehicle license and pay no license tax and registration fee. This I do not believe to be the intent of Subsection (2) (b) of Section 514 of the Soldiers' and Sailors' Civil Relief Act nor the intent of the United States Supreme Court on the **Buzard** case and there appears to be no justification for holding that a license tag could be issued to such serviceman upon payment of $3.00 thereby exempting him from the payment of $10.00. As a matter of fact, the former $3.00 license tax and registration fee was used for practically the same purposes as now provided in Section 10 of Act No. 223, supra. Title 51, Section 713, Code of Alabama 1940, as amended prior to Act No. 223, provided, in part, as follows:

> "§ 713. Distribution of license taxes on motor vehicles and trailers, and on trucks and truck-tractors for hire. . . . The money collected as motor vehicle license taxes by the state, less appropriations for salaries and expenses, shall be used exclusively to create a sinking fund for the prompt and faithful payments of the principal and interest on good road bonds and for construction and maintenance as required under the provisions of article XX of the Constitution of Alabama."

The license tax and registration fee of $13.00 is essential to the functioning of Alabama's licensing and registration laws in their application to the motor vehicles of resident personnel in Alabama as well as nonresident servicemen regardless of what the proceeds are used for. It is my opinion that the language used by the United States Supereme Court in **Buzard** that Section 514 (2) (b), supra, did not represent a congressional judgment that servicemen should contribute to the costs of highway maintenance whether at home or where they are stationed by paying whatever taxes the state of registration may levy for that purpose does not relate to those taxes which are essential to the functioning of the host states' licensing and registration laws in their application to the motor vehicles of nonresident servicemen. The Court stated:

> "Congress was clearly concerned that servicemen stationed away from their home State should not drive unregistered or unlicensed motor vehicles. Every State required in 1944, and requires now, that motor vehicles using its highways be registered and bear license plates. . .

> "It is plain at the outset that California may collect the 2% tax only if it is a 'license, fee, or excise' on a motor vehicle or its use. The very purpose of § 514 in broadly freeing the nonresident serviceman from the obligation to pay **property and income taxes** was to relieve him of the burden of supporting the governments of the states where he was present solely in compliance with military orders . . . Even if Congress meant to do more by the proviso of § 514(2)(b) than insure that the car would be registered and licensed in one of the two States, it would be inconsistent with the broad purposes of § 514 to read subsection (2)(b) as allowing the host State to impose taxes other than 'licenses, fees, or excises' when the 'license, fee, or excise' of the home State is not paid." (Emphasis added.)

The Supreme Court appears to have recognized the fact that motor vehicle registration fees are for the privilege of using the state highways and the proceeds usually devoted to highway purposes. Note 8 ending on page 484 of 86 S. Ct. states as follows:

> "The statutes commonly recited that these fees, whatever their measure, were imposed for the privilege of using the State's highways; the proceeds were usually devoted to highway purposes. Even where property value was the measure of the fees, they were characterized as privilege, not property, taxes."

In the case of **Snapp v. Neal**, 86 S. Ct. 485, the Court stated:

> "We reverse on the authority of our holding today in Buzard that the failure to pay the motor vehicle 'license, fee, or excise' of the home State entitles the host State only to exact motor vehicle taxes qualifying as 'licenses, fees, or excises'; the ad valorem tax, as the Mississippi Supreme Court acknowledged, is not such an exaction."

It is my opinion that the license taxes and registration fees levied by Section 693, as amended by Act No. 223, supra, are motor vehicle taxes qualifying as "licenses, fees, or excises" within the meaning of Subsection (2)(b) of Section 514, supra, and that, therefore, a nonresident serviceman stationed in Alabama in compliance with military or naval orders may be required to register and license his motor vehicle by the payment of $13.00 under Section 693, supra, plus the seventy-five cents issuance fee, unless he has registered his motor vehicle and obtained current license plates under the laws of his home state. I see nothing in Section 514(2)(b), supra, nor in the **Buzard** case to indicate that a nonresident serviceman stationed in Alabama in compliance with military or naval orders need pay only that amount necessary to defray the "costs of registration and licensing private motor cars" as suggested by the Staff Judge Advocate, Brookley Air Force Base, Alabama.

Very truly yours,
MacDONALD GALLION
Attorney General

December 6, 1967

Hon. Ralph P. Eagerton
Chief Examiner
Dept. of Examiners of Public Accounts
State of Alabama
Montgomery, Alabama

Employment, Employers and Employees — Expenses — Traveling Expenses — Examiner of Public Accounts — Finance Department — Words and Phrases.

1. The term "traveling in the service of the State" is construed to mean travel by an employee in carrying out his duties as a State employee.

2. The Department of Examiners of Public Accounts should enforce the legally promulgated rules of the Department of Finance relating to travel expense.

3. The phrase "official station or base" as contained in Rule #6 of the Department of Finance is defined as being a building or place, usually an office building, which is considered by both employer and employee to be the place from which will emanate all work of the employee, where he will receive orders and directions, where he will make his reports, and where, usually, he will receive his pay.

4. An employee traveling on the business of the State away from his base station is entitled to travel expense in accordance with applicable rules even though such travel is within the city or county where his base station is located.

5. An employee may not live in a place other than the place of his permanent base station and receive travel expense to the place of his base station.

6. An agency head has wide discretion in making temporary assignments of employees and the word "temporary" connotes a limited period of time, a period that will terminate within a certain time.

7. There is no legal authority for an agency head to reimburse an employee for expenses incurred in moving his household goods from one permanent station to another permanent station.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an opinion of this office bearing date of August 18, 1967 is as follows:

"There presently exists between the various departments of the state a difference of procedure on payment of expense per diem under Title 41, Section 154, Code of Alabama Recompiled 1958 (1965 Cumulative Pocket Parts). As examples, I am enclosing eight expense statements which I have labeled attachments 'A' through 'H' for reference.

"You will note on attachment 'A' that the department considers travel to Mt. Meigs from Montgomery as entitled to mileage plus one unit of per diem as per Department of Finance regulations. For travel to Kilby from Montgomery for one based in the capitol building, the department allows only mileage as per attachment 'B'.

"On attachment 'C' the department concerned allows mileage plus one unit per diem for an employee based in Andalusia for such as only ten miles travel in 'Andalusia Area & Vicinity.' On attachment 'D' you will note that the same department also allows mileage plus one unit per diem for an employee based in Montgomery for 26 miles listed as 'Montgomery & Vicinity.' You will note that the same department by attachment 'E' allows one unit per diem and no mileage to an employee who works in its administrative office in Montgomery but lives in Prattville, Alabama. On attachment 'F' please note that an employee of the same agency based in Montgomery is allowed mileage and one unit per diem for 20 miles traveled in 'Montgomery & Vicinity.'

"On attachment 'G' you will note that an employee of another department is based in Troy but regularly works in Montgomery and travels to and from his base each day for which he draws two units per diem, but at different amounts for each day. The department pays actual expenses not exceeding the maximum of the units authorized.

"Please note on attachment 'H' that an employee of another agency based in Birmingham is allowed mileage and one unit per diem for travel from Birmingham to Homewood, round trip of 10 miles.

"Title 41, Section 154, supra, makes no reference to 'base' of an employee but, rather, allows a maximum amount per day for persons 'traveling in the service of the state of Alabama' or its agencies, boards, etc. within the state.

"In Quarterly Report of Attorney General, Volume 46, page 21, it was held that the Director of Finance could, with approval of the Governor, make rules and regulations in regard to travel expenses of state employees and also prescribe the form upon which such expenses would be reported to the State Comptroller. On the reverse side of the travel expense form pre-

scribed by the Director of Finance are the rules (a copy of which is attached), one of which provides:

" 'Under no circumstances will per diem in lieu of subsistence be allowed an employee at his official station or base.'

"I request your opinion on the following matters:

"(1) Please define the term 'traveling in the service of the state of Alabama.'

"(2) Please inform me whether or not this department can, through its audit procedures, enforce the rules of the Director of Finance respecting travel expense.

"(3) Please define the words 'official station' and 'base.'

"(4) May an employee collect per diem expense (other than mileage) for travel within the limits of the city or county of his principally-assigned place of employment?

"(5) May an employee be principally assigned to a city other than his home on a permanent basis and allowed per diem expense for the work days he is at his place of assignment?

"(6) If the answer to the fifth question is in the negative, when would a temporary assignment be considered as unreasonable in length of time requiring a consideration of the employee to be in a permanent status?

"(7) If an employee is reassigned from one city to another on a permanent basis, is there any method of payment authorized to defray the expense of moving for the employee?"

Title 41, Section 154, Code of Alabama 1940, as Recompiled 1958, and as amended, provides as follows:

"§154. The maximum amount allowable to a person traveling in the service of the state of Alabama or any of its agencies, institutions, boards, bureaus, or commissions for expenses other than actual expenses of traveling shall be fixed by the governor at not more than eleven dollars per day, such maximum or limit when fixed from time to time to be uniform in operation as to all persons while said persons are traveling within the state. Persons traveling in the service of the state or any of its agencies, institutions, boards, bureaus or commissions outside the state of Alabama shall be allowed all their actual and necessary expenses in addition to their actual expenses for transportation, provided such travel shall have first been duly authorized in writing by the governor; provided further, that persons traveling on official business for the state or any of its agencies, institutions, boards, bureaus, or commissions in privately owned vehicles shall receive ten cents per mile in lieu of their actual expense for transportation, provided, however, that the above per diem payment

shall not be made for a period in excess of two consecutive months for an employee stationed at the same place in the state of Alabama and after the completion of two consecutive months' period the amount of the per diem shall be reduced to five dollars and fifty cents per day."

To enable him to properly audit expense accounts submitted for payment, the Director of Finance of Alabama several years ago promulgated a rule which provides in pertinent part as follows:

"Unless otherwise provided by law, the official authorized to grant travel may authorize a per diem allowance not to exceed $9.00 in lieu of subsistence expenses while traveling on official business within the boundary limits of the State of Alabama.

* * * * *

"In computing the per diem in lieu of subsistence for continuous travel of more than 24 hours, the calendar day (midnight to midnight) will be four units, and for the fractional parts of a day at the commencement or ending of such continuous travel, constituting a travel period, one unit or one fourth of the rate for a calendar day will be allowed for each period of six hours or fraction thereof: provided that no per diem will be allowed for any travel not exceeding six hours. Further, only one unit will be allowed for travel not exceeding eight hours, or the units may be held to one or adjusted (downward) to comply with departmental policy by departmental administrative decision.

* * * * *

"Under no circumstances will per diem in lieu of subsistence be allowed an employee at his official station or base."

Since the promulgation of the above rule, the amount allowed as subsistence has been increased to $11.00 per day. See Act No. 790, General Acts of Alabama 1965, p. 1476.

It will be noted that the cited portion of the Finance Director's rule is permissive rather than mandatory; meaning that an agency or department head could limit an employee's travel expense to actual expenses incurred up to the maximum amount of $11.00, or up to the amount of a quarterly unit of $2.75. Or, the agency or department head could approve a full unit of $2.75 for an employee "traveling in the service of the State," depending on the amount of time actually spent on the business of the State.

Within the framework of the law and the Finance Director's rule the agency or department head has been, and of right must be given, considerable discretion in deciding when and how much one of his employees will be paid travel expenses while conducting the business of the State.

By the same token, it is my opinion that the Department of Examiners of Public Accounts of Alabama should be given some guide

lines which they may follow in auditing expense accounts of the various agencies of the State.

I wish to make it crystal clear that what I am about to say in answering your questions is for the purpose of establishing general, somewhat flexible, limits within which the agencies of the State must stay in paying expense accounts of its employees, so that you may have some legal guides to govern your examination of the expense accounts of said State employees. It is also to be understood that in order for me to give my opinion on the legality of a particular expense account, I would have to have all of the facts pertaining to that expense account and a decision would then be made on that basis.

1. You asked me to define "traveling in the service of the state of Alabama," which is a part of Section 154, supra, and my answer would be that this is travel authorized by a superior of an employee to be performed for the purpose of carrying out his job as a State employee. Certainly a department head must have considerable discretion in making a decision of whether or not the best interests of the State would be served if an employee of his were to be directed to travel from one place in the State to another. To hold otherwise, would, in my judgment, unduly limit a department head in the execution of the duties placed upon him by the Legislature. Consequently, the definition to be accorded the phrase "traveling in the service of the state of Alabama," is that travel by an employee in carrying out his duties as such employee which is ordered by his superior.

2. It is my opinion that the Department of Examiners of Public Accounts should, in its auditing procedures, enforce the legal rules and regulations relating to travel expense of all departments and agencies, including, of course, the Finance Department.

3. The Finance Director's rule under consideration provides, in pertinent part, as follows:

> "Under no circumstances will per diem in lieu of subsistence be allowed an employee at his official station or base."

You have asked me to define "official station or base" as used in that rule.

I am of the opinion that the phrase above set out means in ordinary business parlance a building or place, usually an office building, but not always, which is considered by both employee and superior to be the place of assignment from which will emanate the work of the employee, where he will receive orders and directions as to the carrying out of his duties, where he will make his reports, and where, generally, he receives his pay. I also intend for this definition to be accorded a liberal meaning because it is quite obvious that it is nearly impossible to cover every situation. That is why I said in the beginning that for me to give a specific decision would require a particular set of facts.

4. Again, I must place considerable discretion in the agency head as to whether the best interests of the State will be served by an

employee traveling away from his "base station," even though it be in the same city or county. I am of the opinion therefore that said employee should be compensated in the manner determined by that agency within the framework of Section 154, supra, and the Finance Director's rule, and any local agency rule.

5. It is my opinion that this question should be answered in the negative.

Such travel as posed in your question would not be for the best interests of the State. Such travel would be solely for the convenience of the employee because he did not want to live in the town or city of his "permanent assignment" or his "base station." The travel here described would be **to** his work, not **about** his work. (Emphasis supplied.)

6. Here again, in order to answer your question, I must repose wide latitude in the agency head in making the assignment and also take into consideration the kind of work to be done by the employee.

A permanent assignment would be, according to the thinking of the agency head at the time he makes his decision, an assignment that was to last for an indefinite period of time. Such an assignment envisions the lapse of a considerable length of time.

Whereas, the very word "temporary" connotes a **limited** period of time, a length of time that will certainly terminate, but not so with **permanent.** Therefore, I would have to conclude that whether an employee is on **permanent** assignment or **temporary** assignment would be a decision for the agency head. Only he knows the requirements of the agency which must be met in order for it to carry out its functions.

Here again a particular fact situation must be presented to enable me to make specific conclusions.

7. I am unable to find any legal authority for reimbursing an employee for expenses incurred in moving his household goods from one permanent station to another permanent station. Therefore, I am constrained to say that such reimbursement would be illegal.

Again, I wish to state that a specific opinion must rest on a particular fact situation.

I have attempted to answer your questions so as to give you and the various State agencies concerned some guides to follow in paying travel expenses and yet not be so specific as to unduly restrict the discretion that has been reposed in the various agency heads by the State Legislature to execute assigned governmental functions.

Very truly yours,
MacDONALD GALLION
Attorney General

December 7, 1967

Honorable W. W. Malone, Jr.
City Attorney
City of Athens
Athens, Alabama

Bids — Contracts — Municipalities — Officers and Offices.

1. A municipality may sell its real property not needed for public purposes.

2. A member of a municipal council may purchase from the municipality real property not needed for public purposes on a competitive bid basis.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated November 9, 1967, is as follows:

"The City of Athens, Alabama owns a tract of land for which it has no use and intends to sell the same by offering it for sale on sealed bids after advertising and placing a minimum.

"One member of the City Council is interested in submitting a sealed bid for this property. We would appreciate your giving us your opinion as to whether a member of the Council would violate any provision of the laws of Alabama in submitting a sealed bid and if he were the highest bidder, if the City could convey the property to him. Of course, under Title 37, Section 413, Code of Alabama Recompiled 1958 if this particular Councilman was the highest bidder he would not vote on the question."

Act 843, Acts of Alabama 1953, page 1135, authorizes a municipality to sell its real property which is not needed for public purposes.

Title 37, Section 414, Code of Alabama 1940, provides that no alderman or officer or employee of a municipality may be directly or indirectly interested in any work, business, or contract, the expense, price, or consideration of which is paid from the municipal treasury.

Section 414, supra, does not prohibit a municipality from selling its real property in a manner such as is contemplated by your request. This is true since a sale of such property does not involve the payment of any funds from the municipal treasury.

Since the member of the municipal council to which your request refers is in no better position than any other prospective purchaser, I am of the opinion that a sale to such member in the manner suggested would not violate public policy. Cf. **City of Coral Gables et al. v. Weksler et al. (Fla.)**, 164 So 2d 260.

Therefore, you are advised that the City of Athens may sell the property here considered to a member of its council if said member submits the highest bid.

Very truly yours,
MacDONALD GALLION
Attorney General

December 8, 1967

Honorable W. M. Cousins, Jr.
Judge of Probate
Elmore County
Wetumpka, Alabama 36092

Filing Tax — Deeds — Mortgages.

1. No deed tax due for recording written evidence of fact of foreclosure, where mortgagee becomes the purchaser, so called.

2. Where excess amount bid in at foreclosure by mortgagee, over and above mortgage debt, no additional deed tax due based upon the excess or surplus.

Opinion by Assistant Attorney General Payne.

Dear Judge Cousins:

Your letter requesting opinion of this office is as follows:

"It will be appreciated if you will give me a ruling on the following problem:

"On a mortgage foreclosure deed wherein the mortgagee is the purchaser at foreclosure, a mortgage tax having been paid on the mortgage, and the foreclosure sale having been made for an amount in excess of the amount for which tax on the mortgage has been paid,

"(a) Is any deed tax due?

"(b) If so, should it be for the full amount of foreclosure bid, or only for the excess?"

The deed tax to which you refer is provided by Title 51, Section 618, Code of Alabama 1940, as amended, Recompiled 1958. In short, this statute requires a deed tax for the recordation of deeds, bill of sale or other instruments of like character which convey any real or personal property, or which convey any interest in any such property. This office had for consideration a question similar to yours in an opinion written for Honorable Thomas W. Coleman, Anniston, Alabama, in Biennial Report of Attorney General, 1922-1924, page 230. The Coleman opinion dealt with an act similar to that of Section 618, supra; in fact,

the act appears to be the predecessor of said Section 618. It was there ruled:

> "It is my opinion that this Act intends to deal with actual conveyances of real and personal property or of some interest in real or personal property. Though a paper writing may be in form a deed, if it shows on its face that it does not convey real or personal property or any interest therein, then, in my opinion, such paper writing is not subject to the privilege tax provided for in said Act. Where a mortgagee of real estate forecloses his mortgage, under a power of sale contained therein, and bids in the property at the foreclosure sale, the paper writing which purports to convey the property so bid in by him to him, in my opinion, conveys neither real nor personal property, nor any interest therein. The legal title to the property was already in the mortgagee and the foreclosure sale had the effect of cutting off the equity of redemption that was in the mortgagor . . . .
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> * * * * *
>
> " . . . What then did the so-called deed from the mortgagee to himself convey? Nothing. This **so-called deed** does not affect any title or interest. As to conveying anything, **it leaves the parties exactly as they were before its execution.** It is simply a written memorial of the foreclosure of the mortgage and the purchase at the sale by the mortgagee. It is evidential merely of facts as to the foreclosure, but it conveys nothing." (Emphasis supplied.)

The Coleman opinion was followed by this office in Biennial Report of Attorney General, 1928-1930, page 686. There is no necessity for the execution of a deed to the mortgagee where he becomes the purchaser under the power of sale provided in the mortgage. **Mallory v. Agee,** 226, Ala. 596, 147 So. 881; **Ritter v. Mosley,** 226 Ala. 648, 148 So. 143; **Singley v. Land,** 244 Ala. 692, 15 So. 2d 564; **Penny v. Penny,** 247 Ala. 434, 24 So. 2d 912. Where the mortgagee becomes the purchaser under the power of sale contained in a mortgage "the authorities all agree that the execution of a deed is not essential to vest the legal title, for the simple reason that the mortgagee holds the legal title under the mortgage." **Ritter v. Mosley,** supra.

Labeling the mortgagee as the "purchaser" where he allegedly bids in the property at the sale, is in reality a misnomer. As pointed out above, the mortgagee has previously acquired title to the property by the terms of the mortgage and hence, cannot purchase that which is his at the time of foreclosure or sale. This status or condition with respect to the mortgagee being referred to as the "purchaser" is aptly described in Volume 17, Words and Phrases, page 396, thusly:

> "We familiarly say that a foreclosure invests the petitioner with the interest of the party foreclosed; but we thus describe a practical effect, rather than state what is absolutely true. All that is actually accomplished is the extinguishment of a

right—the interposition of a perpetual legal bar against the party foreclosed. The decree only professes to close a door, which equity before had kept open; **not to confer a right or pass a title.** The only effect which a foreclosure has is to extinguish the mortgagor's personal right of redemption. Goodman v. White, 26 Conn. 317, 322." (Emphasis supplied.)

Under the circumstances related in your request and based upon the authorities mentioned above, it is my opinion that no deed tax is due, and therefore, your question (a) is answered in the negative.

The fact that a surplus or excess was paid in by the mortgagee at foreclosure over and above the amount of the mortgage debt, would have no bearing relative to the requirements of Section 618, supra. As I have pointed out, the mortgagee took title to the property involved upon execution of the mortgage. Upon default by the mortgagor in payment, the mortgagee's title became absolute—and absolute as of the date of the execution of the mortgage. **Cooper v. Peak,** 252, Ala. 384, 41 So. 2d 590, 592, 593; **Rudulph v. City of Homewood,** 245 Ala. 648, 18 So. 2d 563. It is true, that after default the mortgagee still retained his equity of redemption; and after foreclosure there remained the right of the mortgagor to the two-year statutory right of redemption. However, the mortgagee by paying a surplus or excess at foreclosure acquired no better, greater, or more complete title than that vested in him at the time. I am unable to tell from your request whether there was an agreement between the parties that the mortgagee pay more at foreclosure for the benefit of the mortgagor, but I presume that this occurred. Even if no agreement existed, the excess money bid, over and above the mortgage debt, would rightfully belong to the mortgagor. **Pruett v. First National Bank,** 229 Ala. 441, 157 So. 846; **Continental Casualty Co. v. Brawner,** 227 Ala. 98, 148 So. 809. In sum, title to the property having been vested in the mortgagee at the time of foreclosure, payment of an excess amount, as indicated in your letter, did not improve or make more complete the mortgagee's title.

In view of the above, to reiterate, your question (a) is answered in the negative; and this also disposes of your question (b).

Very truly yours,
MacDONALD GALLION
Attorney General

December 27, 1967

Honorable W. Warner Floyd
Executive Director
Alabama Historical Commission
304 Dexter Avenue
Montgomery, Alabama

Taxation — Exemption — Gifts to Historical Commission.

1. Act No. 168, Special Session, 1966, Legislature of Alabama, establishes the Historical Commission of Alabama
2. Section 385(j), Title 51, Code of Alabama 1940, exempts contributions to recognized educational institutions from state income tax.
3. The Historical Commission of Alabama is an educacational institution within the purview of Section 385(j), supra.
4. Section 4, Act No. 168, supra, establishes the Alabama Historic Preservation Fund in the State Treasury and contributions made to the Historical Commission should be made payable to that fund.

Opinion by Assistant Attorney General Burson.

Dear Sir:

Your request for an official opinion dated November 7, 1967, is as follows:

> "The Alabama Legislature created the Alabama Historical Commission and established the 'Alabama State Historic Preservation Fund' in Act No. 168 of the Special Session, 1966.
>
> "This fund was established for the Commission to deposit all monies received from public and private sources for acquiring, preserving and operating historic sites and structures.
>
> "Please tell us if such gifts from individuals and industries are exempt from State Income Tax and if such checks should be made to the 'Alabama State Historic Preservation Fund.'
>
> "A copy of Alabama Act Number 168 is enclosed."

Your questions are answered in the affirmative. Gifts from individuals and industries are exempt from State income tax on the return of the donors and the checks should be made payable to the Alabama State Historic Preservation Fund.

Section 385(j), Title 51, Code of Alabama 1940, provides, in part, as follows:

> "In computing net income, there shall be allowed as deductions:
>
> "(j) Contributions or gifts made within the taxable year to recognized religious, charitable and scientific or educational institutions. . . . "

Sections 1 and 2, Act No. 168, Special Session, 1966, establishes the Commission and enunciates its purpose. Those sections provide as follows:

> "Section 1. The Historical heritage of the State of Alabama is among its most valued and important assests, and the preserva-

tion of historic sites, buildings and objects within the State is of great concern to Alabama and its people. It is of special value to the youth of Alabama as a constant reminder of the circumstances under which our State was born and nurtured, and under which our great nation has developed. To further foster the understanding and preservation of our heritage there is hereby created and established an agency of the State of Alabama to be known as the Alabama Historical Commission.

"Section 2. The purpose of the Alabama Historical Commission, hereinafter referred to as The Commission, shall be to acquire in its own name by purchase, devise, gift, bequest, assignment or transfer, buildings, objects and sites of historic, archeological or achitectural significance, including adjacent properties deemed necessary for the proper setting, use and administration of same, and said buildings, objects and sites shall include, but shall not be limited to the following:

"(a) Buildings in which events of great significance to Alabama's or the Nation's history have taken place, and the sites surrounding them.

"(b) Birth places or residences of outstanding personages and the sites surrounding them.

"(c) The sites of historic or significant events in Alabama or United States history, including military engagements, Indian treaties and massacres.

"(d) Buildings of significant or outstanding architectural value.

"(e) Buildings, sites, objects or monuments of special significance to our cultural, military, social, economic, religious or commercial heritage, including post-roads, traces, ruins, railroads, plantations, wharfs, missions, places of treaties, cemeteries, fortifications, and places of worship."

A properly constituted historical foundation such as the Alabama Historical Commission is an educational institution. Words and Phrases, Educational Corporation, Vol. 14, Page 131, illustrates the ratio decidendi, applied by the courts. The statement is as follows:

"The Daughters of the Republic of Texas which was organized as a corporation for the declared purpose of perpetuating the memory and spirit of the men who achieved Texan independence, and to encourage historical research into the early history of Texas, and promote the celebration of Independence Day of the Texas Republic, and erect monuments upon places made historic in the war for Texan independence, was a corporation organized for 'educational' purposes within Rev. Civ. St. 1911, Art. 1121, Vernon's Ann. Civ. St. Art. 1302, permitting private corporations to be formed for educational purposes, 'education'

> in the statutory sense meaning not merely instruction received at school, but the whole course of training, both moral, intellectual, and physical. Conley v. Daughters of the Republic, 156 S. W. 197, 201, 106 Tex. 80."

The established maxim that tax exemption statutes are to be construed most strongly against the taxpayer and in favor of the taxing authority is not applicable in the instance of charitable, religious, educational or similar organizations. In fact, the reverse is true. The Alabama case of **Home Oil Mill v. Willingham,** 68 F. Supp. 525, is authority for the above conclusion. The opinion by Judge Lynne states, in part, as follows:

> "While the general rule of law is that in case of doubt, exemption provisions of tax statutes are to be construed strictly and are to be resolved in favor of the taxing power, an exception exists in the case of provisions exempting charitable, religious, educational and similar organizations. In the case of such exemptions, the rule of liberal construction is to be applied. Trinidad v. Sagrade Orden, etc., 263 U. S. 578, 44 S. Ct. 204, 68 L. Ed. 458; Helvering v. Bliss, 293 U. S. 144, 55 S. Ct. 17, 79 L. Ed. 246, 95 A. L. R. 207; Roches Beach, Inc. v. Commissioner of Internal Revenue, 2 Cir., 96 F. 2d 776."

Thus the contributions to the Alabama Historical Commission are exempt on the State of Alabama income tax return to the donors thereof.

> Section 4, Act No. 168, supra, provides as follows:
>
> "There is hereby established in the State Treasury a fund to be known as the 'Alabama State Historic preservation Fund' into which shall be deposited all monies received by the Commission from admissions, inspection fees, gifts, donations, grants, bequests, loans, governmental appropriations or any other sources, either public or private. Such funds shall be used by by the Commission to pay the costs of the maintenance, acquisition, preservation and operation of its carrying out any and all of the purposes of this act, including the payment of the salaries of any employees of said Commission and any expenses of said Commission."

Funds that are contributed should, of course, be made payable to the Alabama State Historic Preservation Fund as specifically provided in Section 4, supra.

Very truly yours,
MacDONALD GALLION
Attorney General

December 29, 1967

Honorable J. O. English
Judge of Probate
Coffee County Courthouse
Elba, Alabama 36323

License Tags — Motor Vehicles.

Payment of license tax and registration fee on a quarterly declining basis authorized for private passenger automobiles and trucks and truck tractors.

Opinion by Assistant Attorney General Livingston.

Dear Judge English:

Your request for an official opinion dated December 20, 1967, is as follows:

> "Question has arisen with quarterly deductions on automobile and truck tags to be issued on or after January 1, 1968.
>
> "Our problem seems to be whether or not to deduct quarterly payment from automobiles and trucks which have been standing up and not being used on the highways of the State of Alabama, from October 1, 1967 until after the first of January, 1968.
>
> "We understand from the instructions received that new cars and trucks will be eligible for a reduction of 25% of the original price upon or after the said date of January 1, 1968. We will appreciate your early opinion since January 1 is just around the corner."

With respect to private passenger automobiles, Act No. 311, General Acts 1967, which became effective October 1, 1967, provides as follows:

> "Section 1. Notwithstanding any other provision of law, the license tax and registration fee to be paid for any private passenger automobile, either new or used, that may be acquired or first brought into and operated on the public streets or highways of this state after the first day of October of any year shall be computed by the multiplication of one quarter of the annual license tax and registration fee by the number of calendar quarters remaining in the license year. Each consecutive three calendar month period or part thereof beginning with the first day of October, January, April, and July shall constitute one quarter of a year for the purposes of this act.
>
> "Section 2. All laws or parts of laws which conflict with this act are repealed.
>
> "Section 3. This act shall become effective on the first day of October, 1967."

In view of the above provisions of Act No. 311, it appears that the Legislature has provided a quarterly declining basis for the payment of the license tax and registration fee for private passenger automobiles, either new or used. The amount of such license tax and registration fee depends upon which quarter of the tax year such private passenger automobile is acquired in or first brought into this State and operated on the public streets or highways of this State and is to be computed as follows:

Quarter	License Tax
October 1 through December 31	$13.00
January 1 through March 31	9.75
April 1 through June 30	6.50
July 1 through September 30	3.25

With respect to trucks and truck tractors, Act No. 580, General Acts 1967, which became effective October 1, 1967, amended Section 697, Title 51, Code of Alabama 1940, providing for a license tax for such vehicles based upon gross vehicle weight. Act No. 580 also provides a quarterly declining basis for the payment of such license tax in subsection (d) of Section 697, as amended, which is self-explanatory and provides as follows:

> "(d) Any truck or truck tractor, either new or used, that may be acquired or brought into this state during the first quarter of a tax year, or that may be operated in this state during such period, shall pay the full annual license tax or fee specified herein. Any truck or truck tractor that may be acquired or brought into this state in any subsequent quarter of the tax year (and that shall not theretofore have become subject to license hereunder by virtue of operation on the highways of this state in any then preceding quarter of the tax year) shall be licensed on a quarterly declining basis, and the amount of the license tax or fee shall be an amount equal to one-fourth of the applicable license tax or fee multiplied by the number of quarter years intervening between the date such truck or truck tractor is acquired or brought into the state and the first day of the then succeeding tax year; provided, that for purposes of computing the amount of the license tax or fee on a quarterly declining basis, any part or fraction of a quarter year shall be counted as a full quarter year and any amount less than ten cents shall be figured to the nearest ten cents above the fraction thereof, and in no event shall the cost of the license be less than $3.25. The division of the tax year into quarters, as herein provided, shall be on the basis of calendar months of the entire tax year."

Therefore, any private passenger automobile or truck or truck tractor that has not been operated at any time on the public streets or highways of this State during the first quarter of the current tax year (October 1, 1967 through December 31, 1967) would be entitled to a license tag on the quarterly declining basis, the amount of such license

depending upon which quarter of the tax year the vehicle is first operated on the public streets or highways of this State. See Quarterly Report of the Attorney General, Volume 112, page 38.

Yours very truly,
MacDONALD GALLION
Attorney General

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Fishing Ponds—Concessions	Claude D. Kelley	Oct. 16	Conserv.
Milk Control Board—Expenses	James G. McLean	Oct. 6	Mlk. Cont. Bd.
Officials—Expense Accounts	G. W. Tobias	Dec. 19	Ex. Accts.
Parks—Concessions	Ralph A. Meade	Nov. 1	120
Publicity and Information—Advertising	Martin J. Darity	Oct. 20	Pub. & Inform.
Regional Planning—Counties	Richard L. Dowdy	Nov. 22	Plan. & Ind. Dev.

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TAXATION:			
Chiropodists—Antibiotics	Ira L. Myers	Dec. 12	Health
Chiropractors—Advertising	Douglas O. Benton	Dec. 13	Healing Arts
Cigarette Tax—Parks	Claude D. Kelley	Oct. 24 & Nov. 17	Conserv.
Exemptions—Blind Persons	Thomas A. Hayes	Oct. 27	59
Filing Tax—Indebtedness	Robert H. Kirksey	Oct. 13	34
Filing Tax—Indebtedness	Nelson Allen	Nov. 22	163
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Gasoline Tax—Distribution	E. Z. Turner	Nov. 7	96
Gasoline Tax—Distribution	Agnes Baggett	Nov. 15	St. Treas.
Licenses—Business Trusts	Mary J. Thompson	Oct. 24	Real Estate Comm.
Licenses—General Contractors	Murray W. Beasley	Dec. 18	Lic. Bd.
Licenses—Optometrist	Thomas S. Gibson	Oct. 24	Bd. Opt.
Licenses—Optometry Board	Thomas S. Gibson	Oct. 24	Bd. Opt.
Licenses—Pharmacist	Dan A. Dennis, Jr.	Nov. 9	139
Motor Vehicle Taxes—Distribution	Ernest L. Toenes	Dec. 4	222